

# EXHIBIT B.15

(3 of 11)

### Independent and Impartial Tribunals

Article 7 of MO 378 sets out the principle of judicial independence stating that with respect to matters of jurisdiction, there is no authority other than the law and security legislation enacted by the Military Commander of the West Bank.

Until 2001, the military courts on the West Bank mirrored the military courts for the prosecution of IDF soldiers in the State of Israel in the sense that two non-lawyer military officers would sit alongside a professional judge presiding over a trial chamber. By 2002, however, the procedure had changed and it is now the rule that two professional lawyers - either career army officers or reserve officers (with criminal law experience) sit alongside the presiding judge<sup>6</sup> who is invariably a career army officer at the rank of Lieutenant-Colonel or higher (but never less than a Captain). The quality of the judiciary is maintained by regular continuing legal education which is a mandatory requirement for all including reserve officers such as myself.

### The Presumption of Innocence

Article 29 of MO 378 states as follows:

*"If the accused does not admit the truth of any charge, or the court refuses to accept a plea of guilt, the court shall proceed to hear the case brought by the military prosecutor and his witnesses and any other evidence which it deems fit".*

The Israeli law of evidence, which has been incorporated into the legislation applied by the IDF on the West Bank, assumes that a defendant is innocent until proved otherwise and obliges the Prosecution to make out its case beyond a reasonable doubt.

### The Right to Counsel

Article 8 of MO 378 states as follows:

*"Every case for the prosecution which is to be tried before a military court shall be conducted by a military prosecutor appointed by the Area Commander. The accused may be defended by an advocate".*

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<sup>6</sup> Amendment No. 89 to Military Ordinance No. 378 of 1970.

An accused has the right to appoint a legal representative to protect his interests although he cannot be obliged to accept such legal representation against his will. As will be seen in some of the cases that I examine hereinafter, an accused may, from time to time, choose to dispense with counsel for ideological reasons.

#### The Cases

In reviewing the materials which have been placed at my disposal, I will give a brief summary of the proceedings which occurred in each case and deliver my opinion as to whether the defendant concerned was afforded due process. Each case corresponds to an annex contained in the table below and the materials made available to me are appended to my opinion as an integral part thereof. I should stress that I reserve the right to amend my opinion at a later date in order to factor in any necessary changes which may be necessitated by the production of additional material which may not, for whatever reason, have been made available to me.

Annex/Case #	Israeli ID #	Name of Defendant
1	902442607	מונזר מחמוד חליל נור Moonzer Mahmood Halil Nur
2	980136675	ע/כרים ראתב יונס עוויס Abd-el Karim Ratheb Younis Aweis
3	993006188	נאצר ג'מאל מוסא שוויש Nasser Jamal Mussa Shwaysh
4	903946960	קאהירה סעיד עלי סעדי Kahira Sa'id Ali Sa'adi
5	081021198	סנאא מחמד שחאדה Sana'a Mohammed Shchada

6	030300028	עבדאללה ברגוטי Abdallah Bargouti
7	991260886	אברהים חאמד Ibrahim Hamed
8	994466860	אחמד ברגוטי Ahmed Bargouti
9	902845643	מחמד מצלח Mohammed Messalah
10	979469954	מחמד סאמי איברהים עבדאללה Mohammed Sami Ibrahim Abdallah
11	025806985	פארס ע'אנם Pharess Ghanem
12	904460862	מאג'ד אל מסרי Majid al-Masri
13	920629276	עלי מוחמד חמאד אבו הליל Ali Mohmamed Hamed Abu-Halil
14	410066625	ע/א רחמאן (זאהר) יוסף ע/א רחמאן מקדאד Abd-al-Rahman (Zahar) Youssef Abd-al-Rahman Mekadad
15	901415984	חילמי ע/א כרים מוחמד המאש Hilmi Abd-al-Karim Mohammed Hamash
16	901739656	אחמד צאלח אחמד צאלח Ahmed Salah Ahmed Salah
17	907377113	מוחמד עיסא מוחמד מעאלי Mohammed Issa Mohammed Ma'ali